

### R E M A R K S

Careful review and examination of the subject application are noted and appreciated.

### PRIORITY

A copy of the priority document has been ordered and will be forwarded to the Patent Office when it becomes available.

### IN THE DRAWINGS

While Applicants' representative does not necessarily agree with the requirement to label FIGS. 1-4, in order to further prosecution, FIGS. 1-2 have been labeled "conventional". Replacement FIGS. 1-2 are submitted herewith. The requirement to label FIGS. 3 and 4 has been obviated by appropriate amendment to the specification. Labels have been added to FIGS. 3 and 4 as required by the Examiner. As such, the objection to the drawings should be withdrawn.

### CLAIM REJECTIONS UNDER 35 U.S.C. §103

The rejection of claims 1 and 8 under 35 U.S.C. §103 as being unpatentable over Lange et al. in view of Mock is respectfully traversed and should be withdrawn.

Lange teaches an on-line bit error rate estimator (Title). Mock discloses a digital audio resolving apparatus and method (Title).

In contrast, the present invention provides a method of estimating an error in a data recovery system, comprising the steps of (A) receiving one or more data pulses each having a data rate, (B) receiving a plurality of clock signals each having a rate similar to the data rate and having a substantially equal phase offset from each other, (C) clocking the one or more data pulses with each of the plurality of clock signals to determine a particular offset of each of the one or more data pulses, (D) counting a number of the one or more data pulses received at different phase offsets, (E) providing a value representing a ratio of the counts at different clock phase offsets, and (F) determining the error for the received data pulses in response to the value.

The references appear to be non-analogous art. While Lange and Mock have a primary U.S. classification of 371, Lange has a sub-class of 371/6 while Mock has a sub-class of 371/62. Furthermore, Mock does not appear to be concerned with error estimation, the focus of the presently claimed invention. A word search of Mock shows that only two instances of "estimate" occur (see column 1, lines 50-55). Both instances occur in the background section and are not related to error estimation, but rather "decimal" estimate. Error estimation and decimal estimation

are not the same field of endeavor and are therefore non-analogous art.

Furthermore, no evidence has been provided in the Office Action that Mock is either (i) within the Applicants' field of endeavor or (ii) reasonably pertinent to the particular problem with which the Applicants' were concerned (MPEP §2141.01(a)). The brief mention of analogous art on page 4 of the Office Action is no more than a conclusion, and is not evidence. Due to a lack of evidence to the contrary, the references appears to show that Mock and Lange are non-analogous art and thus the proposed combination is not obvious. As such, the claimed invention is fully patentable over the cited references and the rejection should be withdrawn.

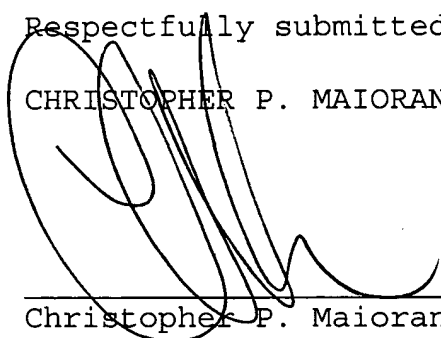
Accordingly, the present application is in condition for allowance. Early and favorable action by the Examiner is respectfully solicited.

The Examiner is respectfully invited to call the Applicants' representative at 586-498-0670 should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge Deposit  
Account No. 12-2252.

Respectfully submitted,

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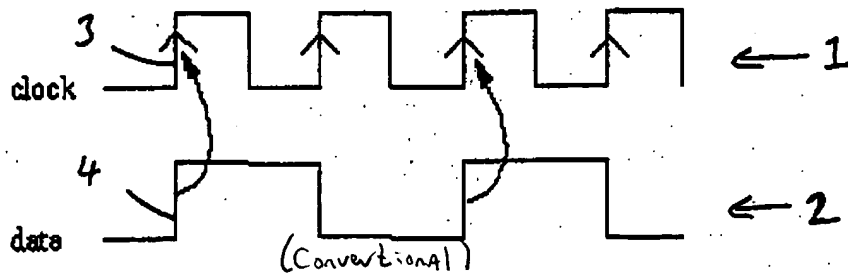
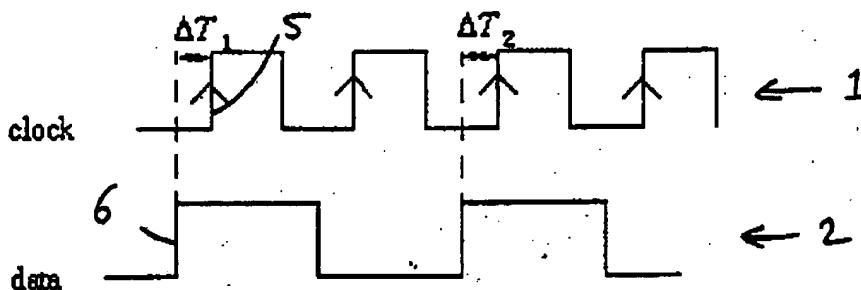
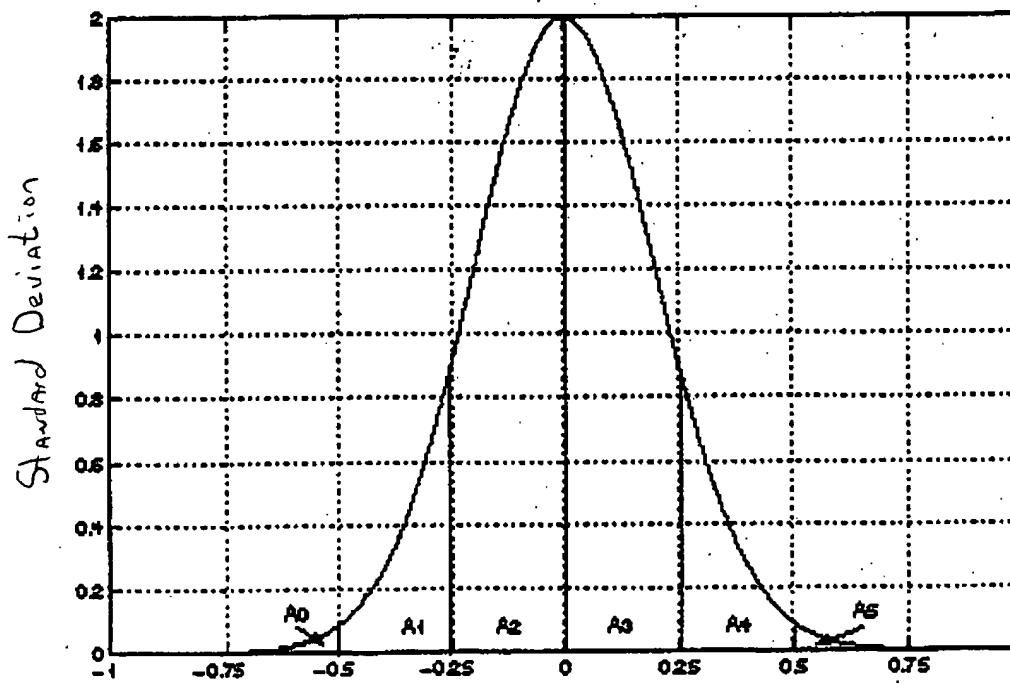


FIG. 1



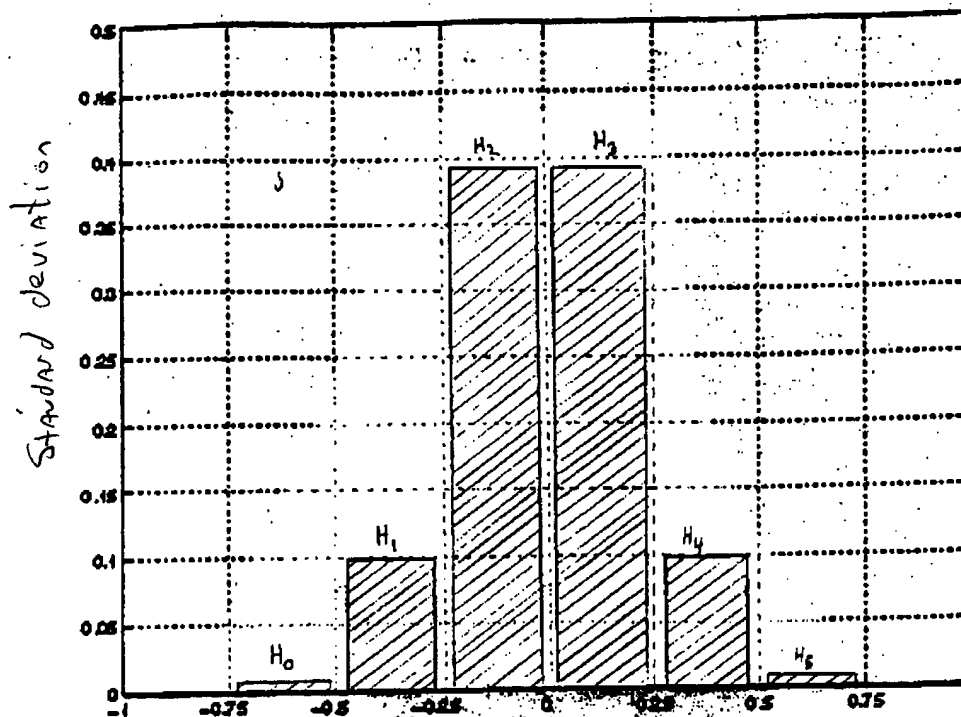
(Conventional)

FIG. 2



Phase Error

FIG. 3



Phase Error  
FIG. 4

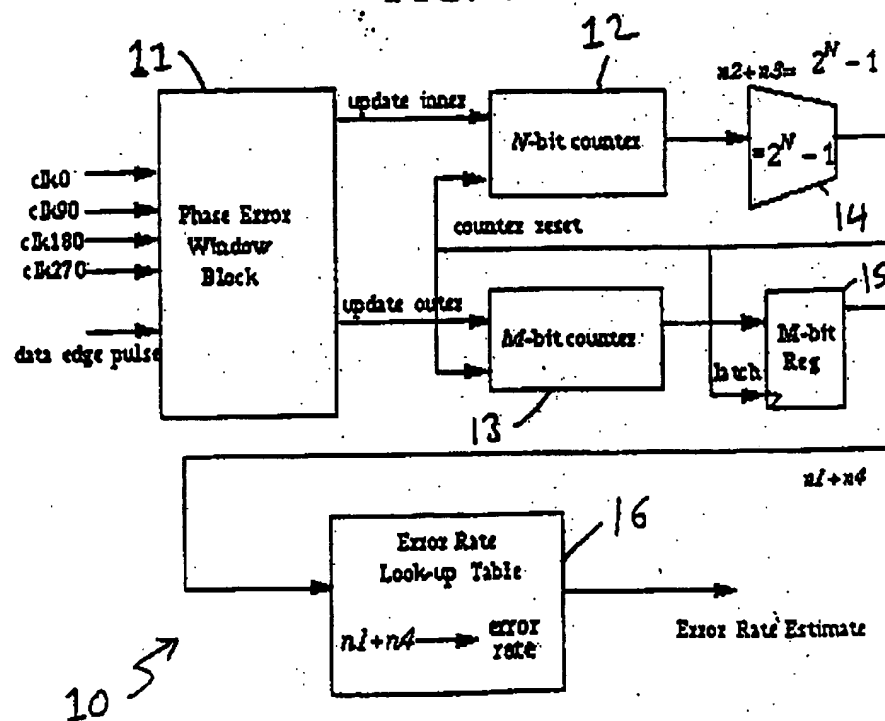


FIG. 5